

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Applications of

**TRINITY BROADCASTING OF  
FLORIDA, INC.**

For Renewal of License of  
Station WHFT(TV) (Channel 45),  
Miami, Florida

**GLENDAL BROADCASTING COMPANY**

For a Construction Permit for  
a New TV Station on Channel 45  
at Miami, Florida

**AND**

**TRINITY CHRISTIAN CENTER OF  
SANTA ANA, INC.**

For Renewal of License of  
Station WHSG(TV) (Channel 63),  
Monroe, Georgia

**GLENDAL BROADCASTING COMPANY**

For a Construction Permit for  
a New TV Station on Channel 63  
at Monroe, Georgia

**AND**

**RECEIVED**

**MAY 26 1999**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

) **MM DOCKET NO. 93-75**

) File No. BRCT-911001LY

) File No. BPCT-911227KE

) **MM DOCKET NO. 93-156**

) File No. BRCT-911129KR

) File No. BPCT-920228KE

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**NATIONAL MINORITY T.V., INC.**

For Renewal of License of  
Station KNMT(TV) (Channel 24)  
Portland, Oregon

) File No. BRCT-931004KI  
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**MARAVILLAS BROADCASTING COMPANY**

For a Construction Permit for  
a New TV Station on Channel 24  
at Portland, Oregon

) File No. BPCT-931230KF  
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**AND**

**TRINITY BROADCASTING OF  
NEW YORK, INC.**

For Renewal of License of  
Station WTBY(TV) (Channel 54)  
Poughkeepsie, New York

) File No. BRCT-940202KE  
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**MARAVILLAS BROADCASTING COMPANY**

For a Construction Permit for  
a New TV Station on Channel 54  
at Poughkeepsie, New York

) File No. BPCT-940426KG  
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**AND**

**TRINITY BROADCASTING OF TEXAS, INC.**

For Renewal of License of  
Station KDTX-TV (Channel  
Dallas, Texas

) File No. BRCT-930402KH  
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**AND**

**NATIONAL MINORITY T.V., INC.**

For Transfer of Control of  
Station KNMT(TV) (Channel 24)  
Portland, Oregon

) File No. BTCCT-930921KN  
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To: The Commission

**MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS  
ON AMENDED JOINT REQUESTS FOR APPROVAL OF  
SETTLEMENT AGREEMENT AND REQUEST FOR EXPEDITED  
TREATMENT, AND JOINT REQUEST FOR APPROVAL OF  
AMENDED AND SUPERSEDING SETTLEMENT AGREEMENT**

1. On May 14, 1999, Trinity Broadcasting of Florida, Inc. ("TBF") and Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("TBN"), National Minority T.V., Inc. ("NMTV") and the Spanish American League Against Discrimination ("SALAD") filed a pleading styled "Amended Joint Request for Approval of Settlement Agreement, and Request for Expedited Treatment" (the "Trinity-NMTV/SALAD agreement").<sup>1</sup> Also on May 14, 1999, alike-styled pleadings were filed by TBN, NMTV, Trinity Broadcasting of Texas, Inc. ("TBT") and the League of United Latin American Citizens ("LULAC") (the "Trinity-NMTV/LULAC agreement") and by TBN, NMTV and California State Conference of Branches of the NAACP and the Alaska/Oregon/Washington State Conference of Branches of the NAACP ("NAACP") (the "Trinity-NMTV/NAACP agreement"). On May 17, 1999, TBF, TBN, NMTV, Glendale Broadcasting Company ("Glendale") and Maravillas Broadcasting Company ("Maravillas") filed a "Joint Request for Approval of Amended and Superceding [sic] Settlement Agreement" (the "Trinity-NMTV/Glendale-Maravillas agreement"). The Mass Media Bureau ("Bureau") hereby files consolidated comments in support of the joint requests.

2. The four agreements look toward the resolution of all but one of the various

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<sup>1</sup> For ease of reference, the named Trinity entities will be collectively referred to herein as "Trinity" unless it is appropriate to distinguish among them.

pending challenges to Trinity's and NMTV's captioned applications regarding the referenced authorizations.<sup>2</sup> If the joint requests are granted, the Commission would: dismiss the various captioned applications of Glendale and Maravillas, which are mutually exclusive with those of TBF, TBN, TBT and NMTV; dismiss the Glendale petition to deny the application to transfer control of Station KNMT(TV); dismiss LULAC's requests to have its petitions to deny the now-dismissed applications regarding the assignment of license of Station WWRS(TV) to Mayville Communications, Inc. and the assignment of Station K20DM, Amarillo, Texas, considered in the proceeding involving TBT's renewal application; and dismiss the various petitions to deny and related pleadings filed by SALAD, LULAC and the NAACP. The instant agreements are not contingent on the grant of any TBN or NMTV application, including the TBF renewal application for WHFT(TV)<sup>3</sup> or the TBN renewal application for KTBN-TV.

Trinity/SALAD, Trinity/LULAC and Trinity/NAACP agreements<sup>4</sup>

3. In the Trinity-NMTV/SALAD agreement, Trinity proposes to reimburse SALAD

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<sup>2</sup> A separate settlement agreement regarding TBN's application for renewal of Station KTBN-TV and a competing application filed by Simon T is pending before the Bureau.

<sup>3</sup> TBF and TBN have filed a "Notice of Appeal" with the United States Court of Appeals for the D.C. Circuit with respect to the Commission's Decision in *Trinity Broadcasting of Florida, Inc.*, FCC 98-313, released April 15, 1999 ("*Decision*"), which denied TBF's application for renewal of license for Station WHFT(TV), Miami, Florida.

<sup>4</sup> On May 18, 1998, the Bureau filed "Mass Media Bureau's Consolidated Comments on Joint Requests for Approval of Settlement Agreement." Rather than incorporate by reference the comments made therein, the Bureau will address anew the instant joint requests and accompanying settlement agreements even though they largely track the settlement agreements that were pending last May. In this regard, the Bureau observes that the parties have addressed the objections raised by the Bureau with respect to the earlier settlement agreements, either by amending the agreements or by explaining the provisions which the Bureau believed questionable.

up to \$143,500 for legal expenses incurred in prosecuting its petition to deny the WHFT(TV), renewal application. In exchange, SALAD will forbear from further prosecution of its petition. Trinity also proposes to give two new nonprofit entities the sum of \$100,000 each for the purpose of funding merit-based scholarships for students attending an institution of higher learning in the State of Florida. In the Trinity-NMTV/LULAC agreement, Trinity and NMTV propose to reimburse LULAC up to \$57,000 for legal expenses incurred in prosecuting its petitions to deny the KTBN-TV and KDTX-TV renewal applications as well as petitions to deny and related pleadings involving the now dismissed applications for the assignment of license for K20DM, Amarillo, Texas, and the assignment of the construction permit for WWRS-TV, Mayville, Wisconsin. In exchange, LULAC will forbear from further prosecution of its petitions. In addition, Trinity and NMTV propose to provide \$1,800,000 to endow a series of grants to designated nonprofit organizations "to promote the increased participation of people of color . . . through opportunities to share in ownership, control, management and contracting in the media and other businesses and industries, and to participate as administrators, teachers and students in public and private education." The Trinity-NMTV/NAACP agreement, proposes that Trinity and NMTV reimburse the NAACP up to \$11,500 for legal expenses incurred in the prosecution of petitions to deny the KTBN-TV and KNMT(TV) license renewal applications. In exchange, the NAACP will forbear from further prosecution of its petitions. In addition, Trinity and NMTV promise to provide \$50,000 to endow a new nonprofit entity for the purpose of funding merit-based scholarships for students attending a California or Oregon institution of higher learning that has a program in broadcasting or mass communications.

4. Section 73.3588 of the Commission's Rules sets forth rules governing the dismissal of petitions to deny. Specifically, Section 73.3588(a) provides, *inter alia*, that the petitioner must affirm that it will not receive consideration for withdrawal of the petition in excess of the petitioner's legitimate and prudent expenses. Further, the petitioner must provide an itemized accounting of the expenses for which it seeks reimbursement. Finally, the other parties to the agreement must certify that they paid or will pay no more than the petitioner's legitimate and prudent expenses in exchange for the withdrawal of the petition to deny. Section 73.3588(b) provides, *inter alia*, that with respect to any agreement arising out of the withdrawal of a petition to deny which results in non-financial consideration such as employment initiatives, the parties must affirm that neither the petitioner nor any related person or organization will be involved in carrying out, for a fee, any employment or other non-financial initiative referred to in the agreement. If the petitioner or a person related to the petitioner will be receiving a benefit, there is a rebuttable presumption that the arrangement is contrary to the public interest. *Amendment of Sections 1.420 and 73.3584*, 5 FCC Rcd 3911, 3913 (1990) ("*Amendment*"). The presumption may be rebutted on a case-by-case basis by clear and convincing evidence that the agreement does, in fact, comport with the public interest. *Id.*

5. As noted above, the only consideration promised to SALAD, LULAC and the NAACP is for reimbursement of those organizations' legal expenses in prosecuting the various petitions to deny. Further, each organization has provided the requisite declarations under penalty of perjury, which establish that the amounts promised do not exceed that organization's legitimate and prudent expenses. Trinity and NMTV have also provided

appropriate declarations. Hence, the amount of consideration to be paid directly to each petitioner to deny is unobjectionable.

6. With respect to the proposals to fund scholarships, the governing provisions explicitly exclude as potential recipients each petitioner's officers and directors, SALAD, LULAC or the NAACP members who executed declarations submitted in the litigation against Trinity, and each petitioner's attorneys, as well as related persons such as their parents and children. *See, e.g.*, Section 1 of the Trinity-MNTV/SALAD agreement. However, other organization members are not excluded. The scholarship funds are to be administered by identified individuals who are represented as independent trustees who are not officers or directors of the petitioners. The "equal opportunity grants" referenced in the Trinity-NMTV/LULAC agreement (Section 1 of the agreement) are to be distributed among the organizations listed under Section 1 of the Second Amendment to Settlement Agreement. LULAC represents that each organization listed qualifies as an entity that is not restricted from receiving such funds. However, the fund is to be administered by a committee composed of senior members of LULAC's board of directors.

7. In *Viacom International, Inc.*, 12 FCC Rcd 8474 (MMB 1997) ("*Viacom*"), the Bureau reviewed settlement provisions similar to those involving scholarships in the Trinity-NMTV/SALAD and Trinity-NMTV/NAACP agreements. In *Viacom*, the Bureau observed that the funds available for distribution were to be administered by an independent trustee, with no business or familial relationship to the petitioner, who, in his sole discretion, would select the recipients. The Bureau then noted that, although the settlement agreement did not

disqualify members of the petitioning group from the trustee's consideration, the fully independent nature of the trustee and unrestricted scope of his choice in disbursing funds assuaged concerns over the flow of indirect benefits to the petitioner. The Bureau concluded that the settlement provisions were consistent with the public interest. *Viacom*, 12 FCC Rcd at 8479.

8. In accord with *Viacom*, the Bureau believes that the scholarship fund provisions of the agreements are consistent with the public interest. The administration of the funds appears to be entirely independent of the petitioners and the potential recipients do not include any person (or immediate family member) directly involved with the litigation. Thus, although the possibility exists that an ordinary member (or related family member) of a petitioner could receive a scholarship, the Bureau is satisfied that the Trinity-NMTV/SALAD and Trinity-NMTV/NAACP agreements comport with the public interest. Moreover, even though the Trinity-NMTV/LULAC "equal opportunity grants" fund will be administered by senior members of the petitioner, the Bureau is satisfied that no violation of the rule will occur because the organizations destined to receive the funds are certified as being separate from LULAC. Thus, LULAC will not receive consideration in excess of its expenses. Accordingly, the Bureau believes that the scholarship and funding provisions are acceptable.

Trinity/Glendale agreement

9. In the Trinity-NMTV/Glendale-Maravillas agreement as amended, Trinity proposes to purchase all of Glendale's and Maravillas' stock for the sum of \$28 million. In exchange, Glendale and Maravillas request dismissal of all their applications which are mutually exclusive with those of Trinity and NMTV. NMTV will contribute \$4 million for



the resolution of the Portland, Oregon proceeding.

10. Section 73.3523 of the Commission's Rules sets forth rules governing the dismissal of applications in renewal proceedings. Specifically, Section 73.3523(c) provides that if a competing applicant seeks to dismiss its application after the Initial Decision stage of the hearing, it must submit a request for approval of the dismissal of its application and a copy of the written agreement related to the dismissal. Further, the withdrawing applicant must submit an affidavit which contains, *inter alia*, a certification that the amount to be paid does not exceed its legitimate and prudent expenses and an itemized accounting of its expenses for which it seeks reimbursement. Section 73.3523(b) provides that if the competing applicant seeks to dismiss its application prior to the Initial Decision stage of the proceeding, it must certify, *inter alia*, that it has not received and will not receive any money in exchange for dismissing its application. Of the competing applications filed by Glendale and Maravillas, only Glendale's Miami application has progressed through the Initial Decision stage.

11. In *EZ Communications, Inc.*, 12 FCC Rcd 3307 (1997) ("*EZ*"), the Commission addressed a settlement which proposed to pay a dismissing applicant an amount which exceeded that applicant's expenses. The Commission noted that the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, eliminated the right of challengers to file applications for new facilities against an incumbent licensee's renewal application filed after May 1, 1995. Considering the timing of the application filed by the *EZ* challenger -- which was after adoption of the rule restricting payments to challengers -- and the statutory change in the broadcast renewal process, the Commission concluded that the limitation on the amount

to be paid to such a competing applicant in order to deter non-bona fide filings no longer served any public interest purpose. *EZ*, 12 FCC Rcd at 3308. The Commission also stated that: "[o]ther requests involving similar comparative renewal proceedings will be considered under this precedent." *Id.*

12. *EZ* should control the instant proceeding. As was the case with the *EZ* challenger, Glendale and Maravillas filed their applications after the settlement limitations were imposed, and there is no reason to believe that either filed its application with expectation of monetary gain. Further, the statutory change in the broadcast renewal process means that no renewal challenges such as those mounted by Glendale and Maravillas will recur. Thus, as in *EZ*, no public interest purpose will be served by enforcing the limitation on the amount to be paid to Glendale or Maravillas since such a limitation is no longer necessary to deter a non-bona fide filing. Moreover, given the uncertainty in the comparative renewal process for those applicants still subject to such hearings, it makes more sense to allow the proposed settlement than have the parties and the Commission spend considerable resources on such litigation, especially where it appears that the challenging applicant did not file for a speculative or other improper purpose. See *Amendment of Parts 1, 73 and 74 - Competitive Bidding*, 13 FCC Rcd 15920, 16006 (1998), recon. FCC 99-74, released April 20, 1999. Accordingly, the public interest would be better served by waiving rules regarding the amounts to be paid Glendale and Maravillas.

13. Finally, the Trinity-NMTV/Glendale-Maravillas settlement agreement appears to comply with Section 311 of the Communications Act. The applicants have affirmed that their agreement is the only agreement related to the settlement, and Glendale and Maravillas have

affirmed that their applications were not filed for an improper purpose. The applicants have also demonstrated that approval of the joint request will serve the public interest by terminating and/or simplifying these proceedings.<sup>5</sup>

Additional matters

14. The Trinity-NMTV/Salad, Trinity-NMTV/LULAC, and Trinity-NMTV/NAACP agreements contain a provision that, for a period of up to 10 years, prohibits the filing of certain documents related to Trinity and/or NMTV. Specifically, those agreements provide that SALAD, LULAC or the NAACP, respectively, may not bring any litigation (except litigation related to an alleged default of the agreement) in any forum or file with the Commission any document opposing the grant of any application, except in cases of alleged racial discrimination and/or alien ownership, to which Trinity, NMTV and/or other various related entities are parties. As explained at n. 3 on p. 6 of the "Joint Response to the Mass Media Bureau's Consolidated Comments on Joint Requests for Approval of Settlement Agreement" filed June 22, 1998 ("Joint Response"), by all of the private parties to these proceedings, the agreements allow SALAD, LULAC and the NAACP to file materials with the Commission involving the public interest areas of concern to those groups. In light of such explanation, the Bureau has no objection to the referenced provision.

15. In the Trinity-NMTV/Glendale-Maravillas agreement, Glendale, Maravillas and related entities would be barred for a period of eight years from filing with the Commission any document opposing the grant of any application to which Trinity, NMTV or any

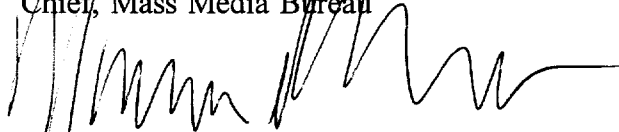
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<sup>5</sup> In this regard, the Bureau notes that approval of the Trinity-NMTV/Glendale-Maravillas settlement will moot the "Contingent Petition of Glendale Broadcasting Company for Limited Reconsideration" filed May 17, 1999. See Contingent Petition at para. 1.

subsidiary or affiliate thereof is a party. However, Glendale et al. are not prohibited from filing a declaratory statement which brings relevant information to the Commission's attention provided that the matter is first raised with Trinity et al., and there have been diligent, good faith efforts to resolve the concerns contained in the declaratory statement. As the parties contend, this provision is similar to a provision found unobjectionable by the Bureau in *Scripps Howard Broadcasting Company*, 10 FCC Rcd 5461, 5472 (ALJ 1995), and the Bureau interposes no objection to its inclusion here.

16. Accordingly, the Bureau supports the joint requests.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



Norman Goldstein  
Chief, Complaints and Political Programming Branch



James W. Shook  
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May 26, 1999

## CERTIFICATE OF SERVICE

Talya Lewis, secretary of the Complaints and Political Programming Branch, Mass Media Bureau, certifies that she has, on this 26th day of May, 1999, sent by regular United States mail, copies of the foregoing, "Mass Media Bureau's Consolidated Comments on Amended Joint Requests for Approval of Settlement Agreement and Request for Expedited Treatment, and Joint Request for Approval of Amended and Superseding Settlement Agreement" to:

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